THE HON'BLE SRI JUSTICE N.V. RAMANA

W.P. No. 10620 of 2004

Oral order:

Heard the learned counsel for the petitioners and the learned Standing Counsel for the respondents-Municipal Corporation of Hyderabad.

The petitioners filed this writ petition to direct the respondents to consider his applications dated 15-5-2004 and 17-5-2004 for grant of permission for reconstruction of compound wall.

The petitioners state that their father purchased the house bearing No.20-2-1016/1, Shahgunj Chowk, Hyderabad, under registered sale deed dated 17-6-1989 from his vendor. According to them, a small strip of open land connecting the 20' CC road exists in front of their house, which is being used by them as approach to their house. The petitioners state that there exists a transformer in the small strip of open land, and to ward off any untoward incident by its existence, their father about seven years ago, constructed a compound wall eclipsing the transformer, leaving some open space for smooth passage of vehicles. While so, it is the case of the petitioners that when they took up the work of plastering the compound wall, the respondents without issuing any notice, dismantled the compound wall, and that though their father made two representations to the respondents, one on 15-5-2004 followed by another on 17-5-2004, requesting them to permit him to reconstruct the wall, no action had been taken thereon. Hence, the present writ petition.

The learned counsel for the petitioners submits that as the petitioners were reconstructing the compound wall in their own land, and not belonging to the government or the respondents, as is evident from the documents in their possession, the respondents could not have dismantled the compound wall nor could have interfered with the reconstruction thereof, and at any rate, dismantling of the compound wall could not have been undertaken, without prior notice to the petitioners. He submits that when the respondents dismantled the compound wall, though the father of the petitioners made two representations to the respondents requesting them to permit him to reconstruct the compound wall, no action had been taken thereon, which is illegal and arbitrary.

The learned Standing Counsel for the respondents produced the relevant record and the photographs relating to the construction of the compound wall, and on the basis of the said record submitted that the small strip of land in which the petitioner's father constructed the compound wall does not belong to him, and in fact, it belongs to the respondents, and the same is being used by the residents of the locality as a common thoroughfare. As the petitioners in the guise of reconstructing the compound wall, sought to encroach the land belonging to the respondents, blocking the thoroughfare, connecting to 20' wide road, the respondents dismantled the compound wall, and no exception can be taken thereto. As the petitioner's father sought permission for construction of the compound wall in the land belonging to the respondents, his representations were not considered.

A perusal of the record produced by the learned Standing Counsel for the respondents relating to the impugned construction of the compound wall would reveal that consequent upon receipt of telephonic complaint from the Corporators of Charminar and Hussainialam Divisions, the respondents inspected the site of the petitioners, and as alleged by the complainants, found that the petitioner's father had encroached the land belonging to the government, which is lying vacant in front of his house and is being used as approach by the residents of the locality, and constructed the compound wall therein during elections. The encroachment made by the petitioner's father is clearly visible from the photographs taken by the respondents during the course of inspection, which show the compound wall constructed by the petitioner's father illegally, protruding onto the approach. The open space encroached by the petitioner's father, it is stated, is serving as an approach to his neighbour and the children of Expert High School. Since the wall constructed by the petitioner's father was blocking the approach, causing inconvenience to the users thereof, the respondents in exercise of the powers vested in them under the Hyderabad Municipal Corporation Act, 1955, demolished the compound wall, and no exception can be taken thereto.

The contention of the petitioners that before seeking to demolish the compound wall, they ought to have issued notice to his father, cannot be accepted. The petitioner's father is admittedly an encroacher of government land, and more so a land which is used as approach, as is evident from the photographs produced before this Court. The respondents, who are under an obligation of providing clear passage to its citizens and vehicle users passing within their jurisdiction, cannot be

expected to keep their eyes closed to the encroachments of approaches, roads and thoroughfares or their blockage right under their nose, and wait till the encroachments and constructions made therein take a concrete shape, and then issue notice to the encroachers and take appropriate steps for their removal or demolition. Therefore, the respondents were well within their powers in demolishing the compound wall raised by the petitioner's father illegally in the land belonging to the government and without valid permission, without issuing any notice or cautioning him. Had the petitioner's father constructed the compound in the land belonging to him, then he would have been justified in demanding a notice before its demolition or seeking grant of permission for its construction. The petitioner's father, leave alone encroaching government land, which admittedly is an approach, but also constructed the compound wall therein without valid permission, blocking the approach to the disadvantage of his neighbours and others. When the construction made by the petitioner's father is itself in the land belonging to the government, I fail to understand how the petitioner's father can expect the respondents to grant him permission to construct the compound wall in the land belonging to them, and therefore, no exception can be taken to the action of the respondents in not considering his request for grant of permission for construction of compound wall. The petitioner's father being an encroacher of government land, cannot expect any indulgence to be shown either by the respondents or by this Court, and if any direction as prayed for by the petitioners is granted, it would amount to this Court directing the respondents to legalize the illegal encroachments.

In the above view of the matter, there is no merit in the writ petition, and the same is accordingly dismissed. No costs.

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N.V. RAMANA, J.

Date: July 16, 2004

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